

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

vs.

Case No. 2002-713-FH
Case No. 2002-1065-FH

RYAN JAMES MAHAFFEY,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for relief from void judgment/order pursuant to MCR 2.612(C)(1)(d) and MCR 6.427.

Defendant pled guilty in Case No. 2002-713-FH to larceny in a building, contrary to MCL 750.360, and in Case No. 2002-1065-FH to aggravated stalking, contrary to MCL 750.411i. On June 19, 2002, defendant was sentenced to probation. On June 3, 2004, defendant pled guilty to a probation violation and an additional charge of stalking, MCL 750.411h, in Case No. 2004-1458-FH. Defendant was sentenced on July 7, 2004, in Case No. 2002-713-FH, to a minimum term of imprisonment of 18 months to a maximum term of 48 months, in Case No. 2002-1065-FH, to a minimum term of 18 months to a maximum term of 60 months, and, in Case No. 2004-1458-FH, to 12 months in the Macomb County Jail to be served concurrent. The sentences in Case Nos. 2002-713-FH and 2002-1065-FH were amended on September 23, 2005 to correct the jail credit calculation.



In Case Nos. 2002-713-FH and 2002-1065-FH, an Order to Remit Prisoner Funds for Fines, Costs, and Assessments dated July 12, 2006, permits the withdraw of funds from defendant's prisoner account to satisfy a balance allegedly owed for the obligation ordered in the Judgement of Sentence dated September 23, 2005. Defendant now seeks relief from the orders to remit prisoner funds.

The trial court may correct an invalid sentence on motion by either party, but the court may not modify a valid sentence except as otherwise provided by law. MCR 6.429(A). A sentence is invalid when it is based on inaccurate information, if it is beyond statutory limits, when it is based upon constitutionally impermissible grounds, improper assumptions of guilt, a misconception of the law, or when it conforms to local sentencing policy rather than individualized facts. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

In his motion, defendant argues that the Judgement of Sentence dated September 23, 2005 does not assess fines, costs, or assessments. Defendant asserts the Court is prohibited to alter a valid sentence. According to defendant, the Court does not have the authority to attach conditions of his probation that has been revoked to his sentence. Defendant concludes the order is void and must be vacated.

A court that revokes probation may proceed to sentence the defendant in the same manner and to the same penalty as if the sentence of probation had never been entered. MCL 771.4. However, the court may not impose costs unless the underlying statute expressly provides for them. *People v Krieger*, 202 Mich App 245, 247; 507 NW2d 749 (1993). The court is without authority to retain previously assessed costs and fines imposed upon defendant as condition of his probation after probation is revoked, as the probation revocation statute, MCL 771.4, contains no express provision for imposition of costs or fines. *Id.*

In the present matter, the Judgement of Sentence dated September 23, 2005 does not assess any fines, costs, or assessments. The record does not demonstrate the sentence was invalid in any manner. The Court is not permitted to modify a valid sentence by assessing additional costs, fines, and assessments not included in the valid judgment of sentence.

The Court notes defendant's obligation to reimburse the county for legal fees and costs is completely independent of his sentence. *People v Dunbar*, 264 Mich App 240, 256; 690 NW2d 476 (2004); *People v Nowicki*, 213 Mich App 383, 386-388; 539 NW2d 590 (1995). In light of defendant's agreements to be responsible for the repayment of attorney fees incurred on his behalf, defendant is required to repay attorney fees incurred in these matters. An order containing provisions to repay expenses related to his court-appointed attorney is valid.

For the above reasons, defendant's motion for relief from void judgment/order is GRANTED. The Orders to Remit Prisoner Funds for Fines, Costs, and Assessments, in Case Nos. 2002-713-FH and 2002-1065-FH, is VACATED. Pursuant to MCR 2.602(A)(3), the Court states this case was previously closed.

IT IS SO ORDERED.

EDWARD A. SERVITTO
CIRCUIT JUDGE

AUG 28 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: [Signature] Court Clerk

EDWARD A. SERVITTO, JR., Circuit Court Judge

Date:

Cc: Macomb County Prosecutor

Ryan Mahaffey, In Pro Per